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RE MADZEHI; EX PARTE: MAYBANK ISLAMIC BHD

HIGH COURT SABAH & SARAWAK, SIBU
WONG SIONG TUNG J
[IN POST-BANKRUPTCY PROCEEDINGS
NO: SBW-29PB-298-7-2024]
B 1 AUGUST 2025

Abstract – *(i) Section 33B(4) of the Insolvency Act 1967 ('IA') confers the right on creditors to apply to court to prohibit the Director General of Insolvency ('DGI') from issuing a certificate discharging a judgment debtor from bankruptcy. It aims not only to protect creditors from unfair discharges, but to also ensure honest bankrupts get a fresh start. If the court is restricted, in such application, to making only the order under s. 33B(6)(a) or s. 33B(6)(b) of the IA and nothing else, a bankrupt who fraudulently concealed assets can still get discharged after two years, and creditors with legitimate objections would be left without recourse. Thus, it cannot be the intention of the Legislature by enacting the provision of s. 33B(6)(a) to (b) of the IA that court has no power to make other orders to prevent injustice in the circumstances; (ii) Although the DGI possesses discretionary authority to issue a certificate of discharge, it is, however, incumbent upon the DGI to substantiate the exercise of that discretion with proper evidential material placed before the court. Mere assertions or unsubstantiated contentions are insufficient. If the DGI fails to faithfully perform his statutory duties or comply with legal requirements, or if a creditor lodges a complaint, the court is obliged to inquire into the matter and may take any action it deems expedient. This provides the court's supervisory authority over the DGI to ensure accountability and proper execution of duties.*

G ***BANKRUPTCY:*** *Discharge – Discharge of bankrupt – Application by judgment creditor ('JC') for order prohibiting Director General of Insolvency ('DGI') from issuing certificate of discharge to judgment debtor ('JD') – Whether objection notice by JC furnished out of time – Whether JC's application procedurally defective – Whether DGI properly exercised discretion in deciding to issue certificate of discharge – Insolvency Act 1967, s. 33A, 33B – Interpretation Acts 1948 and 1967, s. 12*

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BANKRUPTCY: *Discharge – Discharge of bankrupt – Application by judgment creditor ('JC') for order prohibiting Director General of Insolvency ('DGI') from issuing certificate of discharge to judgment debtor ('JD') – Whether court's power or jurisdiction strictly limited to two courses of action prescribed in ss. 33B(6)(a) and 33B(6)(b) of Insolvency Act 1967 – Whether s. 33B(6) ought to be construed*

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harmoniously with s. 33B(4) – Whether court has supervisory authority over DGI to ensure accountability and proper execution of duties – Insolvency Act 1967, ss. 87, 91

This was the judgment creditor's ('JC') appeal against the decision of the Senior Assistant Registrar ('SAR') disallowing the JC's application under summons-in-chambers (encl. 1). A receiving and adjudication order (bankruptcy order) was made against the judgment debtor ('JD') upon the bankruptcy petition presented by the JC. The JC filed a proof of debt, which was admitted by the Director General of Insolvency ('DGI'). Subsequently, the DGI issued a notice of his intention to issue the certificate to discharge the JD under s. 33A of the Insolvency Act 1967 ('IA') pursuant to s. 33B(1) of the same Act. The JC submitted a notice of objection ('JC's objection notice') pursuant to s. 33B (2) of the IA. The DGI rejected the JC's objection. Hence, the JC's application in encl. 1, for, *inter alia*, an order prohibiting the DGI from issuing a certificate of discharge to the JD under s. 33A of the IA, or if such certificate had already been issued, that it be revoked. The SAR disallowed or dismissed the JC's application on the basis that there was no evidence by the JC that the JD, who was now a 60-year- old man, was capable of earning any positive income to contribute to the estate of the JD and that further administration of the matter by the DGI would be a waste of public funds and a waste of time. Hence, this appeal. The issues for determination were (i) whether the JC's objection notice was furnished out of time under s. 33B(2) of the IA; (ii) whether the JC's application by the summons-in-chambers (encl. 1) was procedurally defective for not using Form 98 under r. 196 of the Insolvency Rules 2017, and if so, was it a curable defect; (iii) whether the DGI properly exercised the discretion in deciding to issue the certificate discharging the JD from bankruptcy; and (iv) whether the court's power under s. 33B(4) of the IA restricted to making only orders specified in s. 33B(6)(a)-(b).

Held (allowing appeal):

(1) The DGI issued a notice dated 24 May 2024 of his intention to issue a certificate of discharge in respect of the JD under s. 33A of the IA, pursuant to s. 33B(1) of the same Act. The JC claimed that it only received the DGI's notice on 1 July 2024. This was corroborated by the Pos Malaysia tracking record for the registered post by the DGI on 27 May 2024, which confirmed that the notice was delivered on the JC on 1 July 2024 at approximately 2.01pm. In light of the above, any presumption under s. 12 of the Interpretation Acts 1948 and 1967 ('Interpretation Acts') that the DGI's notice was served on the JC prior to 1 July 2024, was effectively rebutted. Since the DGI's notice dated 24 May 2024 of the intention to issue a certificate of discharge to the JD, was only delivered by the postman and served on the JC on 1 July

A 2024, the JC's objection notice, served on the DGI on 10 July 2024, was clearly within the 21 day period prescribed under s. 33B(2) of the IA. (paras 23, 32, 34 & 35)

(2) Although Form 98 was not used in this instance, an examination of the summons-in-chambers (encl. 1) left no doubt that the substance of the B JC's application was to prohibit the DGI from issuing a certificate of discharge under s. 33B(4) of the IA. The failure to use the prescribed form could not reasonably have misled the DGI or caused any prejudice or injustice to the DGI or any other party. Notably, no such allegation of prejudice had been made. In the circumstances, this procedural C irregularity should not render the JC's application invalid. Courts should not dismiss applications solely on technical or procedural grounds, particularly where no party has been misled or prejudiced as a result. (paras 40-42)

(3a) It was not disputed that the DGI possesses discretionary authority to D issue a certificate of discharge. However, in the context of the JC's application, the question of whether that discretion was exercised reasonably and in accordance with the IA was a matter for judicial determination. It is incumbent upon the DGI to substantiate the exercise of that discretion with proper evidential material placed before the E court. In this case, there was no evidential material presented to substantiate the assertions made by the DGI, particularly with respect to the efforts made and steps taken by the DGI to ensure the JD's compliance with his statutory obligations to disclose and surrender his assets. No evidence had been provided by the DGI regarding any F attempt to trace, locate the JD and identify or realise the JD's assets for distribution and satisfaction of proved debts. Mere assertions or unsubstantiated contentions were insufficient. If that were not the case, there would be no rationale for the Legislature to confer upon a creditor the statutory right under s. 33B(4) of the IA to apply for an order G prohibiting the issuance of a discharge certificate. That statutory right of the creditor would be rendered redundant and meaningless if the court were required and bound to accept, without more, the DGI's bare assertion that the discretion was exercised reasonably and in accordance with bankruptcy law. The very existence of s. 33B(4) of the IA presupposes that such discretion is subject to judicial scrutiny and must H be supported by proper evidential justification. (paras 72-79)

(3b) The DGI cannot merely do nothing in relation to his statutory duties under the IA concerning a person adjudicated bankrupt and then proceed to issue a certificate of discharge after the lapse of five years simply to close the file. Such a practice does not reflect the intention of Parliament I in enacting s. 33A of the IA. The provision was not designed to

rationalise or encourage administrative expediency or tolerate laxity at the expense of statutory compliance. Granting a discharge in these circumstances would not only reward the bankrupts for non-compliance and evasion of their statutory obligations in bankruptcy, but also create a perverse incentive to bankrupts to ignore official notices and avoid detection, in the knowledge that the mere passage of five years would suffice to extinguish liabilities. Such an outcome would erode public confidence in the insolvency framework under the IA, discourage bankrupts from cooperating with the authorities, and undermine the principle set out in *Re Gaskell*. It would also reduce the role of the DGI to a mere custodian of unresolved cases, absolved of any substantive responsibility in administering the bankrupts' estates. In the absence of even basic evidence of effort by the DGI, the issuance of the certificate of discharge was wholly unjustified. (paras 88-94)

(4a) In an application brought by a JC under s. 33B(4) of the IA to prohibit the DGI from issuing a certificate of discharge, the court's power or jurisdiction is not strictly limited to the two courses of action prescribed in ss. 33B(6)(a) and 33B(6)(b) of the same Act. Instead, the court retains a broader discretion, grounded in the principles of justice, equity, and fairness, to make such orders as may be appropriate and necessary in the particular circumstances of each case. Had the Legislature intended to restrict the court's power strictly confined to s. 33B(6)(a)-(b) of the IA in such application of a creditor under s. 33B(4) of the same Act, it would have used the word 'shall' alone in s. 33B(6)(a) -(b) of the Act or used exclusive language such as 'only'. To interpret s. 33B(6) of the IA narrowly would be to read into s. 33B(4) of the same Act, a limitation that does not exist. Thus, s. 33B(6) of the IA ought to be construed harmoniously with s. 33B(4) of the same Act. The rigid application of two choices under s. 33B(6)(a), (b) of the IA 1967 would be inconsistent with the broader right conferred upon a creditor to apply to 'prohibit' issuance of the certificate of discharge by the DGI under s. 33B(4) of the same Act. (paras 104-111)

(4b) The court's power in considering a creditor's application under s. 33B(4) of the IA to prohibit the DGI from issuing a certificate of discharge, if it sees fit to do so, should not be narrowly confined to the two-year prohibition period prescribed under s. 33B(6)(b) alone. Rather, the court retains a broader discretion to issue such further orders or directions as may be appropriate, where the circumstances so warrant when it is just and expedient. Section 87 of the IA empowers the court to oversee and scrutinise the conduct of the DGI. If the DGI fails to faithfully perform his statutory duties or comply with legal requirements, or if a creditor lodges a complaint, the court is obliged to inquire into the matter and may take any action it deems expedient. This provides the court's

supervisory authority over the DGI to ensure accountability and proper execution of duties. Section 91 of the IA grants the bankruptcy court 'full power to decide all questions … and do complete justice.' This is a deliberate preservation of equitable jurisdiction, and allows the court to tailor remedies as required. To deny the court such flexibility in the context of s. 33B(6)(a)-(b) of the IA would undermine the overarching intention of the legislation, that is a just, efficient, and fair administration of bankrupt estates. In the premises, s. 33B(6)(a)-(b) of the IA should not be construed as taking away the general and wide power of the court in its bankruptcy jurisdiction under ss. 87 and 91 of the same Act in the absence of clear and unambiguous language. (paras 114-119)

(4c) Section 33B(4) of the IA that confers the right on creditors to apply to court to prohibit the DGI from issuing a certificate of discharge, aims not only to protect creditors from unfair discharges, but also ensure honest bankrupts get a fresh start. If the court is restricted, in such application, to making only the order under s. 33B(6)(a) or s. 33B(6)(b) of the IA and nothing else, a bankrupt who fraudulently concealed assets (perhaps by making or managed to make himself untraceable to avoid complying with his duties and obligations as a bankrupt under the Act by whatever means) could still get discharged after two years and creditors with legitimate objections would be left without recourse. Thus, it could not be the intention of the Legislature by enacting the provision of s. 33B(6)(a)-(b) of the IA that the court has no power to make other orders to prevent injustice in the circumstances. Furthermore, a narrow construction that restricts the court's power to prohibiting DGI from issuing a certificate of discharge solely for a period not exceeding two years would lead to untenable consequences. It would imply that any improper, unjustifiable, or even abusive exercise of discretion by DGI would be rendered valid or immune from further scrutiny merely upon the lapse of the two-year period. Such an interpretation could not reasonably be presumed to reflect the true intention of the Legislature. (paras 120-124)

(5) The DGI had failed to produce evidential materials to justify the proper exercise of discretion in deciding to issue the certificate of discharge under s. 33A of the IA which the DGI bore the burden to demonstrate. Thus, the DGI was, *inter alia*, prohibited, pursuant to s. 33B(6)(b) of the IA from issuing a certificate of discharge in respect of the JD for a period of two years from the date of this order. (paras 125-126)

Case(s) referred to:

Asia Commercial Finance (M) Bhd v. Bassanio Teo Yang [2009] 9 CLJ 413 HC ***(refd)***
Chan Chee Chiu & Anor v. Director General Of Insolvency & Anor [2025] 3 CLJ 174 HC ***(refd)***
Commissioners Of Customs And Excise v. Cure & Deeley Ltd [1961] 1 QB 340 ***(refd)***
Goh Teng Whoo & Anor v. Ample Objectives Sdn Bhd [2021] 4 CLJ 348 FC ***(refd)***
Mak Sik Kwong v. Minister Of Home Affairs, Malaysia [1975] CLJU 96; [1975] 1 LNS 96 HC ***(refd)***
Maxland Sdn Bhd v. Timatch Sdn Bhd [2014] 7 CLJ 149 FC ***(refd)***
Mayban Finance Bhd v. Lee Kee Sen [2014] 10 CLJ 543 HC ***(refd)***
Re Atwill (A Bankrupt) [1958] NZLR 873 ***(refd)***
Re Benny Ong Swee Siang; Ex P United Overseas Bank (Malaysia) Bhd [2016] 3 CLJ 1001 HC ***(refd)***
Re Chua Liang Hong; Ex p: Kuala Excel Sdn Bhd [2020] 7 CLJ 547 HC ***(refd)***
Re Endon Tamseran; Ex P Parkash Singh Wasawa Singh [2009] 8 CLJ 379 HC ***(refd)***
Re Gaskell [1904] 2 KB 478 ***(refd)***
Re Mat Ali Hanafiah Mohamed, Ex P Asia Commercial Finance (M) Bhd [2001] 5 CLJ 443 HC ***(refd)***
Re Ng Lai Wat; Official Assignee v Housing and Development Board [1996] 2 SLR(R) 261 ***(refd)***
Re Yong Tet On, Paul, Ex Parte Chung Khiaw Bank Ltd [1996] 1 CLJ 836 HC ***(refd)***
Sing Hoe Motor Co Ltd v. PP [1968] CLJU 142; [1982] 1 LNS 142 HC ***(refd)***
TA Securities Holdings Bhd & Anor v. Ketua Pengarah Insolvensi & Anor [2020] 5 CLJ 690 HC ***(refd)***
Tuan Ahmed Abdul Rahman v. Arab-Malaysian Finance Bhd [1996] 1 CLJ 241 FC ***(refd)***
Yap Teck Ngian v. Yap Hong Lang & Ors [2006] 4 CLJ 492 CA ***(refd)***

Legislation referred to:

Bankruptcy Act 1967, s. 33B(4)
Insolvency Act 1967, ss. 16, 27, 33A, 33B(1), (2), (2A), (4), (6)(a), (b), 33C(4), (2), (4), 35A, 87, 90(1), 91, 130, 131
Insolvency Rules 2017, rr. 23, 102(1), 194, 195, 196, 282, 284, 286
Interpretations Acts 1948 and 1967, s. 12
Rules of Court 2012, O. 56 r. 1

Bankruptcy Act (Chapter 20) [Sing], ss. 125, 126
Bankruptcy Act 1908 [NZ], s. 127(a)

Other source(s) referred to:

Malaysian Civil Procedure Volume 1, 2024 edn, para. 56/1-56/1/9

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For judgment debtor - Jennifer Melian

Reported by Suhainah Wahiduddin

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JUDGMENT

Wong Siong Tung J:

The Judgment Creditor's Appeal

[1] This is a judgment creditor's (JC) appeal (encl. 16) against the decision
B of the Senior Assistant Registrar (SAR) on 20 November 2024 disallowing the JC's applications under summons in chambers dated 26 November 2024 (encl. 1).

[2] By the JC's summons in chambers (encl. 1), the JC applied for:

C (i) an extension or abridgment of time (if necessary) to file the present application under s. 33B(4) of the Insolvency Act 1967 (IA 1967);

(ii) an order prohibiting the Director-General of Insolvency (DGI) from issuing a certificate of discharge to the judgment debtor/bankrupt, namely, Madzehi @ Madihi bin Sani (JD) under s. 33A of the IA 1967,
D or if such a certificate has already been issued, that it be revoked;

(iii) a direction to DGI that no certificate of discharge be issued for a period of two years from the date of the court's order;

(iv) a temporary restraint on issuing any discharge certificate pending the
E disposal of this application; and

(v) that the costs of this application be paid from the estate of the JD.

[3] On 20 November 2024, the learned SAR disallowed or dismissed the JC's application on the basis that there was no evidence by the JC that the
F JD, who is now a 60 years old man is capable of earning any positive income to contribute to the estate of the JD and that further administration of the matter by the DGI would be a waste of public fund and waste of time.

Background Facts

[4] A receiving and adjudication order (bankruptcy order) were made
G against the JD on 3 March 2015 upon the bankruptcy petition presented by the JC. (Exhibit LVM1 of encl. 3).

[5] The JC filed a proof of debt amounting to RM214,979.79 on 23 November 2015, which was admitted DGI.

H **[6]** On 24 May 2024, the DGI issued a notice of his intention to issue the certificate to discharge the JD under s. 33A of the IA 1967 pursuant to s. 33B(1) of the same Act. See: exh. MIB1 of encl. 2 or exh. LVM2 of encl. 2.

[7] The JC submitted a notice of objection dated 10 July 2024 (JC's
I objection notice) pursuant to s. 33B(2) of the IA 1967. See: exh. MIB2 of encl. 2 or exh. LVM3 of encl. 3.

[8] By a letter dated 12 July 2024, the DGI rejected the JC's objection. See: MIB3 of encl. 2 or exh. LVM4 of encl. 3.

[9] Hence, the JC's application by this summons in chambers dated 29 July 2024 (encl. 1), which was disallowed or dismissed by the SAR on 20 November 2024.

Appeal From The Decision Of The SAR

[10] There is no issue that the SAR has the power and jurisdiction to hear the matters and under s. 90(1) of IA the 1967, and any order or act by the SAR is considered an order or act of the court, subject to appeal.

[11] Under r. 284 of the Insolvency Rules 2017, in the absence of any rule regulating any proceeding under IA 1967 or the Insolvency Rules 2017, the Rules of the Court 2012 shall apply, *mutatis mutandis* (with necessary modification).

[12] Since s. 90(1) of the IA 1967 provides that any order or act by the Registrar is considered an order or act of the court, subject to appeal and there is no specified provision either in IA 1967 or the Insolvency Rules 2017 for any appeal from the decision of the Registrar thereto, O. 56 r. 1 of the Rules of Court 2012 applies. The appeal against the decision of the SAR is to the judge in chambers.

See: *Re Mat Ali Hanafiah Mohamed, Ex P Asia Commercial Finance (M) Bhd* [2001] 5 CLJ 443; [2000] AMEJ 0240; [2001] 1 MLJ 521.

[13] In hearing the appeal from the decision of the Registrar under O. 56 r. 1 of the Rules of Court 2012, the court is not exercising appellate jurisdiction in the same sense as hearing appeal from judgments, decisions or orders of the subordinate courts. As a general rule, appeal from the decision of a Registrar to a judge in chambers is by way of rehearing, meaning that the matter will be treated as if it was heard for the first time.

See: *Tuan Ahmed Abdul Rahman v. Arab-Malaysian Finance Bhd* [1996] 1 CLJ 241; [1996] 1 AMR 215; [1996] 1 MLJ 30.

See also: *Malaysian Civil Procedure Volume 1* – 2024 edn, para. 56/1 to 56/1/9.

The JC's Submission

[14] In summary, learned counsel for the JC submitted that the DGI's rejection of the JC's objection notice, based solely on its late submission, is untenable and therefore invalid.

[15] Additionally, the JC's learned counsel submitted that the DGI failed to justify the discharge under the relevant bankruptcy laws and did not provide sufficient justification for issuing the certificate of discharge.

A **The DGI's Submission**

[16] The DGI submitted that the JC's objection notice was filed out of time, exceeding the 21-day period stipulated under s. 33B(2) of the IA 1967.

[17] The DGI further contended that the JC's application, filed *via* the
B summons in chambers dated 29 July 2024 (encl. 1), was procedurally defective as it was not filed in Form 98 as prescribed under r. 196 of the Insolvency Rules 2017.

[18] Additionally, the DGI submitted that the discretion under s. 33A of the IA 1967 had been reasonably exercised, taking into account the JD's age,
C inability to make further contributions to the estate, and the absence of realisable assets. Prolonging the administration, the DGI contended, would result in an unnecessary expenditure of public resources.

Issues For Determination

D **[19]** The issues for determination in this appeal therefore are:

(i) was the JC's objection notice furnished out of time under s. 33B(2) of the IA 1967?

(ii) was the JC's application by the summons in chambers dated 29 July 2024 (encl. 1) procedurally defective for not using Form 98 under r. 196
E of the Insolvency Rules 2017, and if so, is it a curable defect?

(iii) did the DGI properly exercise the discretion in deciding to issue the certificate discharging the JD from bankruptcy?

Whether The JC's Objection Notice Was Served Out Of Time Under s. 33B(2) Of
F *The Insolvency Act 1967*

[20] Section 33B(1) of the IA 1967, read together with r. 194 of the Insolvency Rules 2017, requires the DGI to serve a notice of intention to issue a certificate of discharge on each creditor who has filed a proof of debt. This notice must be in Form 96, as prescribed under r. 194.
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[21] Section 33B(2) of the IA 1967, read with r. 195 of the Insolvency Rules 2017, provides that any creditor served with such notice who intends to object must file a notice of objection, stating the grounds of objection, in Form 97 within 21 days from the date the notice was served.

H **[22]** Regarding the mode of service of the notice in Form 96, while r. 23 of the Insolvency Rules 2017 provides that personal service, where required, must be effected by delivering a copy of the application or sealed court order to the party concerned, there is no specific requirement that a notice of intention to issue a certificate of discharge must be personally served on the
I creditor.

[23] Section 130 of the IA 1967 states that, where no special mode of service is prescribed, notices and other documents may be sent by prepaid registered post to the last known address of the person to be served.

[24] In the present case, it is not in dispute that the DGI issued a notice dated 24 May 2024 of his intention to issue a certificate of discharge in respect of the JD under s. 33A of the IA 1967, pursuant to s. 33B(1) of the same Act. The notice was served on the JC by way of registered post on 27 May 2024.

See: Exhibit LVM5 of encl. 3 or exh. MIB1 of encl. 2.

[25] The DGI relied on s. 12 of the Interpretation Acts 1948 And 1967 (Act 388) which provides:

> 12 Service by post
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> Where a written law authorises or requires a document to be served by post, then, **until the contrary is proved,** service -
>
> (a) **shall be presumed to be effected** by properly addressing, prepaying and posting by registered post a letter containing the document; and
>
> (b) **shall be presumed to have been effected at the time** when the letter would have been delivered **in the ordinary course of the post.**
>
> (emphasis added)

[26] The DGI submitted that, pursuant to s. 12 of the Interpretation Acts 1948 and 1967 (Act 388), the DGI's notice dated 24 May 2024 of his intention to issue a certificate of discharge in respect of the JD is deemed to have been effectively served on the JC on 17 May 2024. In support of this submission, reliance was placed on the Federal Court's decision in *Maxland Sdn Bhd v. Timatch Sdn Bhd* [2014] 7 CLJ 149; [2014] 6 MLJ 1.

See: para. 16 of the DGI's written submission (encl. 11).

[27] With respect, this submission is illogical. The DGI's notice, dated 24 May 2024 and addressed to the JC, was only posted on 27 May 2024. Under s. 12 of the Interpretation Acts 1948 and 1967 (Act 388), the notice cannot be deemed to have been served on 17 May 2024, a date preceding its own issuance and dispatch. Such a construction defies both chronology and legal logic.

[28] In *Maxland Sdn Bhd v. Timatch Sdn Bhd* (*supra*), the Federal Court upheld the findings of both the High Court and the Court of Appeal that the defendant had failed to rebut the presumption of service under s. 12 of the Interpretation Acts 1948 and 1967 (Act 388).

[29] In that case, the plaintiff posted the writ on 29 January 2011, and the High Court held that it was presumed to have been served on the defendant on 2 February 2011. The defendant, who claimed to have received the writ

A only on 8 February 2011, failed to adduce objective or independent evidence, such as postal records, to rebut the statutory presumption. Consequently, the Federal Court held that the defendant's appearance, entered on 16 February 2011, was out of time.

B **[30]** The Federal Court in *Maxland Sdn Bhd v. Timatch Sdn Bhd* (*supra*), emphasised that that the presumption of service by post under s. 12 of the Interpretation Acts 1948 and 1967 (Act 388) is a rebuttable one, and may be displaced by credible, independent evidence to the contrary.

C **[31]** In *Goh Teng Whoo & Anor v. Ample Objectives Sdn Bhd* [2021] 4 CLJ 348; [2021] 3 MLJ 159, the Federal Court reaffirmed that s. 12 of the Interpretation Acts 1948 and 1967 (Act 388) gives rise to a presumption of service by registered post, unless rebutted. The court made clear that the provision does not render service by registered post conclusive proof of service.

D **[32]** In the current case, that JC claimed that it only received on the DGI's notice dated 24 May 2024 of his intention to issue the certificate of discharge, on 1 July 2024. This is corroborated by the Pos Malaysia tracking record for the registered post sent by the DGI on 27 May 2024, which confirms that the notice was delivered to the JC on 1 July 2024 at approximately 2.01pm.

E **[33]** Furthermore, the DGI has admitted to these facts. See: para. 10 of the affidavit of DGI (encl. 3) read with para. 4 of the affidavit of JC (encl. 2).

[34] In light of the above, any presumption under s. 12 of the Interpretation Acts 1948 and 1967 (Act 388), that the DGI's notice was served on the JC prior to 1 July 2024, is effectively rebutted.

F **[35]** Since the DGI's notice dated 24 May 2024 of the intention to issue a certificate of discharge to the JD, was only delivered by the postman and served on the JC on 1 July 2024, the JC's objection notice, served on the DGI on 10 July 2024, was clearly within the 21-day period prescribed under s. 33B(2) of the IA 1967.

G *Whether the JC's Application Was Defective for Not Using Form 98 And Whether the Defect Is Curable*

[36] The JC's application, filed by way of summons-in-chambers dated 29 July 2024 (encl. 1), was brought pursuant to s. 33B(4) of the IA 1967.
H However, the application was not in the format prescribed under Form 98 of the Insolvency Rules 2017, as required by r. 196 of the same rules, rendering the application procedurally irregular.

[37] Notwithstanding this procedural defect, s. 131 of the IA 1967 provides:

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131 Formal defect not to invalidate proceedings

No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of that court.

[38] This position is reinforced by r. 282 of the Insolvency Rules 2017, which states:

282 Effect of non-compliance with Rules

Non-compliance to any of these Rules or with any of practice for the time being in force shall not render any proceeding void unless the court shall direct but such proceedings may be set aside either wholly or in part as irregular or amended or otherwise dealt with in such manner and upon such terms as the court may think fit.

[39] As to the forms prescribed by the Insolvency Rules 2017, r. 286 provides:

286 Forms

(1) The forms in the Schedule, where applicable, and where they are not applicable, forms of the like character, with such variations as circumstances may require shall be used.

(2) Where such forms are applicable any costs occasioned by the use of any other or more prolix forms shall be borne by or disallowed to the party using the same unless the court shall otherwise direct.

[40] Although Form 98 was not used in this instance, an examination of the summons in chambers dated 29 July 2024 (encl. 1) leaves no doubt that the substance of the JC's application was to prohibit the DGI from issuing a certificate of discharge under s. 33B(4) of the IA 1967.

[41] The failure to use the prescribed form could not reasonably have misled the DGI or caused any prejudice or injustice to the DGI or any other party. Notably, no such allegation of prejudice has been made.

[42] In the circumstances, this procedural irregularity should not render the JC's application invalid. Courts should not dismiss applications solely on technical or procedural grounds, particularly where no party has been misled or prejudiced as a result.

See: *Re Chua Liang Hong; Ex p: Kuala Excel Sdn Bh*d [2020] 7 CLJ 547.

Whether The DGI Properly Exercised Discretion In Issuing The Certificate Of Discharge Under s. 33A Of The Insolvency Act 1967

[43] Under IA 1967, there are three primary modes of discharge from bankruptcy. In general and briefly, they are as follows:

A (i) discharge by court – Pursuant to s. 33 of the IA 1967, a bankrupt may apply to the court for a discharge at any time after being adjudicated bankrupt. In considering the application, the court will take into account the report of the DGI regarding the bankrupt's conduct and financial affairs. The court may grant the discharge with or without conditions;

B (ii) discharge by certificate of the DGI – Under ss. 33A and 33B of IA 1967, the DGI may issue a certificate of discharge upon the lapse of five years from the date of the bankruptcy order. This process is subject to the right of creditors to object within the prescribed period, although objections must not be based on grounds deemed impermissible under the Act C (s. 33B(2A)); and

(iii) automatic discharge – provided under s. 33C of the IA 1967, a bankrupt is automatically discharged three years after filing the statement of affairs, subject to compliance with contribution targets toward provable debts and the obligation to render accounts to the DGI. This automatic D discharge is also subject to objections by creditors on limited statutory grounds (s. 33C(4)).

[44] Sections 33A and 33B of the IA 1967, which empower the DGI to issue a certificate of discharge, were introduced by the Bankruptcy (Amendment) Act 1998 (Act A1035), which came into force on 1 January E 1999.

[45] Section 33C of the IA 1967, which provides for automatic discharge from bankruptcy, was later introduced by the Bankruptcy (Amendment) Act 2017 (Act A1534), with effect from 10 May 2017.

F **[46]** These provisions have since been amended on few occasions, including by the Bankruptcy (Amendment) Act 2003 (Act A1197), the Bankruptcy (Amendment) Act 2017 (Act A1534), and the Insolvency (Amendment) Act 2023 (Act A1695).

G **[47]** In *Re Gaskell* [1904] 2 KB 478, Vaughan Williams LJ held at p. 482 that:

> … the overriding intention of the Legislature in all Bankruptcy Acts is that *the debtor on giving up the whole of his property shall be a free man again, able to earn his livelihood, and having the ordinary inducements to industry.* Sometimes it is not right that the bankrupt should be free immediately; he must pass H through a period of probation; and theoretically there may be cases in which he ought not to be free at all, *but prima facie he is to give up everything he has, and on doing that he is to be made a free man.* (emphasis added)

[48] This foundational principle applies equally, whether the discharge from bankruptcy is sought pursuant to s. 33 (by order of court), ss. 33A and I s. 33B (by certificate of the DGI), or s. 33C (automatic discharge) of the IA

1967. That is, a bankrupt individual, upon surrendering all his/her property, should be afforded the opportunity to be restored as a free individual, capable of earning a livelihood and motivated to work industriously.

[49] The legislation thus seeks to strike a fair balance between the legitimate interests of creditors in debt recovery and the public interest in giving bankrupts a reasonable opportunity for a fresh start and their economic reintegration.

[50] Sections 33A and 33B of the IA 1967 were modelled on ss. 125 and 126 of the Singapore's Bankruptcy Act (Chapter 20), which were introduced in the Republic of Singapore in 1995. However, unlike the Malaysian IA 1967, the Singaporean legislation does not contain a provision equivalent to s. 33C of the IA 1967, which allows for automatic discharge.

[51] According to the statement made by the Deputy Minister in the Prime Minister's Department on 29 July 1998, recorded in the Penyata Rasmi Parlimen Dewan Rakyat, Parlimen Kesembilan, Penggal Keempat, Mesyuarat Kedua – Rang Undang-Undang Kebankrapan (Pindaan) 1998 – Bacaan Kali Yang Kedua dan Ketiga (DR.29-1998, at p. 16), the legislative objectives underlying the introduction of ss. 33A and 33B of the IA 1967, which vest discretionary authority in the DGI to issue certificates of discharge, may be summarised as follows:

(i) to expedite and simplify the discharge process by authorising the DGI to issue discharge certificates after five years from the date of the bankruptcy order, thereby eliminating the need for court proceedings and reducing procedural delays, legal costs, and case backlogs;

(ii) to facilitate the rehabilitation of "honest but unfortunate" bankrupts, such as those affected by economic crises or acting as guarantors or those bankrupts who became insolvent due to misfortune rather than malpractice, a faster path to financial recovery or fresh start, while still upholding financial discipline and fostering entrepreneurial activity;

(iii) to provide incentive to bankrupts to comply with statutory obligations by offering early discharge to bankrupts who cooperate with the DGI in accordance with s. 35A of the Act;

(iv) to address and resolve inactive bankruptcy cases (estimated at around 30%) involving individuals who cannot be traced, lack identification records, or are elderly or incapacitated; and

(v) to strike a balance between the interests of bankrupts and creditors by preserving creditors' rights to object to a proposed discharge under s. 33B and to appeal any rejected objection within 21 days, thus ensuring meaningful participation and protection of creditor interests throughout the discharge process.

[52] Although s. 33A of the IA 1967 confers discretionary power on the DGI to issue a certificate of discharge in favour of a bankrupt after a period of five years from the date of the bankruptcy order, subject to the right of creditors to object under s. 33B, the provisions do not prescribe any clear or specific criteria governing the exercise of that discretion.

[53] The only statutory guidance available pertains to the list of factors set out in s. 33B(2A), which merely identifies circumstances that cannot be relied upon as valid grounds for creditor objection by creditors.

[54] In *Re Benny Ong Swee Siang; Ex P United Overseas Bank (Malaysia) Bhd* [2016] 3 CLJ 1001; [2016] 8 MLJ 805, the court held that pursuant to the ss. 33A and 33B of the IA 1967, the DGI does not have the absolute discretion to issue the certificate of discharge. While the DGI's exercise of the discretion is plainly subjected to the provisions in s. 33B of the Act, the discretion must be exercised judiciously depending on the circumstances of each case. Public interest, reason and justice demand that any statutory power must be exercised reasonably and with due consideration.

See also: *Chan Chee Chiu & Anor v. Director General Of Insolvency & Anor* [2025] 3 CLJ 174.

[55] In *Mayban Finance Bhd v. Lee Kee Sen* [2014] 10 CLJ 543, the court, in considering an application by a judgment creditor to prohibit the DGI from issuing a certificate of discharge under s. 33A of the IA 1967, held that the burden lies on the DGI to demonstrate that the discharge is warranted and just in the circumstances of the case. The court highlighted that due regard must be given to public interest and considerations of commercial morality, and that a delicate balance must be achieved between, on the one hand, releasing the bankrupt from the legal and financial constraints of bankruptcy, and, on the other hand, protecting the rights of the judgment creditor, and other creditors, to recover the sums due to them.

[56] In *Asia Commercial Finance (M) Bhd v. Bassanio Teo Yang* [2009] 9 CLJ 413, it was held that the court should be slow to substitute its own views for the discretion exercised by the DGI under s. 33A of the IA 1967, except in clear-cut cases of abuse.

[57] In that case, the bankrupt had diligently complied with the payment order for eight years, had no assets to be realised, and incurred the debt as a social guarantor rather than the primary borrower. The court found no evidence of abuse, such as reckless financial behaviour or extravagant living on the part of the bankrupt to justify the court to interfere with the discretion exercised by the DGI to issue the certificate of discharge of the bankrupt from bankruptcy under s. 33A of the IA 1967.

[58] In *TA Securities Holdings Bhd & Anor v. Ketua Pengarah Insolvensi & Ors* [2020] 5 CLJ 690, the High Court emphasised the duties of DGI to conduct a proper and thorough investigation into the conduct and affairs of the bankrupt prior to issuing a certificate of discharge under s. 33A of the IA 1967. The court held that the DGI's discretion under s. 33A of the IA 1967 is not absolute, and must be exercised according to law, that is, reasonably and with due regard to all relevant considerations. The exercise of the discretion to issue the certificate of discharge to a bankrupt must not be illegal, irrational or procedurally improper.

[59] Although *TA Securities Holdings Bhd* involved an application for judicial review by a creditor seeking to quash the DGI's decision to issue a certificate of discharge under s. 33A of the IA 1967, the same principles articulated by the High Court regarding the propriety of the DGI's discretion are equally applicable to a creditor's application under s. 33B(4) of the Act.

[60] There is no rational basis to distinguish between the standards applicable in judicial review proceedings and those that govern the court's evaluative role under s. 33B(4) of the IA 1967. In both cases, the challenge is directed against the propriety of the DGI's exercise of discretion to issue the certificate of discharge, and the same legal criteria, reasonableness, lawfulness, and procedural propriety, must logically apply.

[61] Similarly, in *Re Ng Lai Wat; Official Assignee v Housing And Development Board* [1996] 2 SLR(R) 261, the Singapore High Court held (at paras. 38 and 39) that, in determining whether to issue a certificate of discharge under s. 125 of the Singapore's Bankruptcy Act (Chapter 20), the following factors must be taken into account:

(i) the cause of the bankrupt's insolvency;

(ii) the bankrupt's conduct relevant to the bankruptcy;

(iii) the exemplary conduct of the bankrupt since his bankruptcy;

(iv) the interests of the public at large; and

(v) commercial morality.

[62] These criteria reflect and serve to uphold the principle established in *Re Gaskell* (*supra*), namely that a bankrupt who has honestly surrendered all his property in compliance with bankruptcy law should be granted the opportunity to be freed from the constraints of bankruptcy and given a chance to make a fresh start.

[63] This court is of the view that the legislative objectives and underlying intent of ss. 33A and 33B of the IA 1967 are not materially different from those of ss. 125 and 126 of the Singapore's Bankruptcy Act (Chapter 20). Both statutory frameworks are designed to strike a fair balance between

A facilitating the rehabilitation of bankrupt individuals and safeguarding the legitimate interests of creditors, while upholding principles of commercial morality and public interest.

[64] Indeed, if the Legislature had intended the DGI's discretion under s. 33A of the IA 1967 to be unfettered or immune from scrutiny, and not
B subject to any obligation to furnish justifying facts or reasons, then the right conferred on a creditor under s. 33B(4) of the IA 1967 to apply to the court for an order prohibiting the issuance of a discharge certificate would be rendered illusory and futile. It would be a meaningless exercise, devoid of any substantive value.

C **[65]** Such a narrow interpretation would be contrary to established principles of statutory construction, which presume that Legislature does not enact provisions in vain, and that remedies provided by statute must be capable of meaningful effect.

D **[66]** The right conferred upon a creditor by s. 33B(4) of the IA 1967 to apply to the court to prohibit the DGI from issuing the discharge certificate contemplates a check-and-balance mechanism intended by the Legislature whereby the court may intervene where the discretion is exercised improperly.

E **[67]** In the present case, the JC filed a notice of objection to the issuance of the certificate of discharge of the JD by the DGI, stating the following grounds:

(i) no payment or dividend has ever been received by the JC;

F (ii) the JD has made no attempt to settle the debts and/or comply with his obligations under IA 1967; and

(iii) the proposed discharge is not warranted.

See: exh. MIB2 of encl. 2 or exh. LVM3 of encl. 3.

G **[68]** However, the DGI rejected the JC's objection solely on the basis that it was filed outside the prescribed 21 day time limit under s. 33B(2) of the IA 1967. The court has since determined that this basis for rejection was incorrect.

[69] Whether the JC's grounds of objection are sufficient or made up
H depends on the specific circumstances of the case, including the bankrupt's financial position, his conduct, and his compliance with the requirements of bankruptcy law, particularly ss. 16 and 27 of the IA 1967, which require the surrender of all assets available for distribution and the payment of proved debts. Where there is non-compliance, it is also relevant to consider what
I steps the DGI has taken to enforce the bankrupt's duties, including efforts to trace and realise undisclosed assets for the benefit of creditors.

[70] In opposing the JC's application *via* the JC's summons in chambers dated 26 November 2024 (encl. 1), made pursuant to s. 33B(4) of the IA 1967 to prohibit the issuance of the bankrupt's certificate of discharge, the DGI's justification rests primarily on the following grounds:

(i) more than five years have lapsed since the receiving and adjudication orders were made against the bankrupt;

(ii) the DGI possesses discretionary authority to issue the certificate of discharge;

(iii) the JC's grounds of objection are insufficient; and

(iv) the DGI has exercised the discretion reasonably and in accordance with applicable bankruptcy laws.

See: para. 14 to 16 of encl. 3.

[71] The grounds advanced by the DGI amount to mere contentions or assertions.

[72] There is no evidential material presented to substantiate these assertions, particularly with respect to the efforts made and steps taken by the DGI to ensure the JD's compliance with his statutory obligations to disclose and surrender his assets.

[73] No evidence has been provided by the DGI regarding any attempt to trace, locate the JD and identify or realise the JD's assets for distribution and satisfaction of proved debts.

[74] Instead, the DGI merely advances a bare contention that the JC's grounds of objection are insufficient, and that the discretion to issue the certificate of discharge was exercised reasonably and in accordance with bankruptcy law.

[75] Such unsupported assertions fall short of the evidentiary standard required to justify the issuance of the certificate of discharge, the burden of which lies on the DGI in the present JC's application to prohibit the issuance.

[76] The court does not dispute that the DGI possesses discretionary authority to issue a certificate of discharge. However, in the context of the JC's application, the question of whether that discretion was exercised reasonably and in accordance with IA 1967 is a matter for judicial determination.

[77] It is incumbent upon the DGI to substantiate the exercise of that discretion with proper evidential material placed before the court. Mere assertions or unsubstantiated contentions are insufficient.

A **[78]** If that were not the case, there would be no rationale for the Legislature to confer upon a creditor the statutory right under s. 33B(4) of the IA 1967 to apply for an order prohibiting the issuance of a discharge certificate.

[79] That statutory right of the creditor would be rendered redundant and
B meaningless if the court were required and bound to accept, without more, the DGI's bare assertion that the discretion was exercised reasonably and in accordance with bankruptcy law. The very existence of s. 33B(4) of the IA 1967 presupposes that such discretion is subject to judicial scrutiny and must be supported by proper evidential justification.

C **[80]** The DGI also submitted that it is pointless for the DGI to continue administering the file in respect of the JD. According to the submission of the DGI, it would be against the public policy and good sense for the DGI to continue to incur further costs to keep such a file active as the bankruptcy estate of the JD has been administered by the DGI for more than nine years
D since receiving and adjudication orders were made against JD.

[81] The DGI also submitted that the JD is untraceable and could no longer be expected to contribute to the benefit of his estate and creditors, and there is no more asset of the JD that could be realised, and that prolonging
E the administration of the JD's estate would, in the DGI's view, amount to a waste of public funds and human resources.

[82] The DGI further submitted that this is precisely the type of situation the Legislature had envisaged when enacting s. 33A of the IA 1967, thereby conferring upon the DGI the discretionary power to issue a certificate of
F discharge.

[83] However, with respect to the submission that continued administration would incur unnecessary costs and waste public resources, no evidential material has again been placed before the court in this application to support that assertion.

G **[84]** There is no indication of the specific actions taken in relation to the JD's file, nor any accounting of the actual costs incurred. This omission is particularly significant in light of r. 102(1) of the Insolvency Rules 2017, which requires the petitioning creditor to deposit RM2,000 with the DGI, along with any additional sums the DGI considers necessary to cover fees
H and expenses.

[85] Likewise, the submission that the bankrupt is untraceable, unable to contribute further to the estate, and has no remaining assets has not been supported by any evidence.

I

[86] There no evidential material presented by the DGI to demonstrate that reasonable efforts were made to trace or locate the JD or to investigate and realise his assets. In the absence of such evidence, these submissions remain unsubstantiated assertions.

[87] In short, there are no evidence or documents produced to support any tracing efforts. There is no affidavit detailing steps taken to locate the JD. There is no record of attempts to administer or realise assets.

[88] The DGI cannot merely do nothing in relation to his statutory duties under IA 1967 concerning a person adjudicated bankrupt and then proceed to issue a certificate of discharge after the lapse of five years simply to close the file.

[89] This court does not accept that such a practice reflects the intention of Parliament in enacting s. 33A of the IA 1967. The provision was not designed to rationalise or encourage administrative expediency or tolerate laxity at the expense of statutory compliance.

[90] The issue is not merely that more could have been done, rather, it appears that nothing at all was done.

[91] Granting a discharge in these circumstances would not only reward the bankrupts for non-compliance and evasion of their statutory obligations in bankruptcy, but also create a perverse incentive to bankrupts to ignore official notices and avoid detection, in the knowledge that the mere passage of five years would suffice to extinguish liabilities.

[92] Such an outcome would erode public confidence in the insolvency framework under IA 1967, discourage bankrupts from cooperating with the authorities, and undermine the principle set out in *Re Gaskell* (*supra*).

[93] It would also reduce the role of the Director General of Insolvency to a mere custodian of unresolved cases, absolved of any substantive responsibility in administering the bankrupts' estates.

[94] In the absence of even basic evidence of effort by the DGI, this court is compelled to conclude that the issuance of the certificate of discharge is wholly unjustified.

Whether The Court's Power Under s. 33B(4) Of The Insolvency Act 1967 Is Restricted To Making Only The Orders Specified In s. 33B(6)(a)-(b)

[95] The only question remains to be considered and determined is, what kind of order, the court is permissible to made having regards to s. 33B(6)(a) and 33B(6)(b) of the IA 1967.

[96] In *Re Benny Ong Swee Siang, ex p United Overseas Bank (M) Bhd* (*supra*), the judgment debtor was adjudged bankrupt in 1998 following a creditor's petition by the judgment creditor. The judgment creditor filed a proof of debt

A amounting to RM231,509.30. The DGI wrote to the judgment debtor only twice in 1999 and 2012 at his last known address, but received no response. As a result, the estate remained unadministered.

[97] Subsequently, the DGI issued a notice of intention to discharge the bankrupt. The judgment creditor objected, citing the unadministered state of
B the estate.

[98] However, in that case, the DGI rejected the judgment creditor's objection, stating that the case had been administered for 16 years, the judgment debtor could not be located, had no known assets, and no dividends could be declared.
C

[99] The judgment creditor filed an application to prohibit the DGI from issuing the discharge certificate, which was dismissed by the Senior Assistant Registrar (SAR). The judgment creditor appealed. The court in holding that the DGI does not have absolute discretion to issue a certificate of discharge
D and the discretion must be exercised judiciously and in compliance with s. 33B of the Bankruptcy Act 1967 (it was known then), found that the DGI failed to utilise reasonable efforts to locate the judgment debtor. The court held that by merely writing two letters over 17 years was insufficient effort and that judgment debtor's estate remained unadministered, as procedures
E such as creditor meetings and public examination of the debtor had not been undertaken. The court was also of the view that issuing the certificate of discharge in the circumstances would allow the judgment debtor in that case to evade responsibility for the judgment debt, leaving the judgment creditor without recovery of the debt.

F **[100]** The court, therefore, allowed the appeal and granted the judgment creditor's application to prohibit the DGI from issuing the certificate of discharge under s. 33B(4) of the Bankruptcy Act 1967. Notably, the court did not limit itself to making an order under s. 33B(6)(b), which would have merely deferred the discharge for up to two years.

G **[101]** In that case, it seems that in allowing the judgment creditor's application under s. 33B(4) of the Bankruptcy Act 1967, the court also directed the DGI to procure the attendance of the judgment debtor and commence the administration of the estate in bankruptcy.

[102] This court is mindful, however that there are cases where the court
H held that in such an application, the court's power is restricted to either dismiss the creditors' application under s. 33B(6)(a) of the IA 1967 or make an order that, for a period not exceeding two years, the DGI shall not issue a certificate of discharge under s. 33B(6)(b) and nothing else.

I See: *Asia Commercial Finance (M) Bhd v. Bassanio Teo Yang* [2009] 9 CLJ 413 at para. 11; *Chan Chee Chiu & Anor v. Director General Of Insolvency & Anor* [2025] 3 CLJ 174; *Re Endon Tamseran; Ex P Parkash Singh Wasawa Singh* [2009] 8 CLJ 379.

[103] In his further written submissions, learned counsel for the JC acknowledged the High Court decisions holding that the court's powers under s. 33B of the IA 1967 are limited to either dismissing the JC's application pursuant to s. 33B(6)(a) of the same Act, or making an order under s. 33B(6)(b) of the same Act, prohibiting the DGI from issuing a certificate of discharge for a period not exceeding two years. However, counsel appears to submit that this court should depart from those decisions on this point.

[104] With the greatest respect, and after consideration of the relevant provisions pertaining to the discharge of bankrupt in the context of the whole of IA 1967 and the applicable case law, this court is of the view that, in an application brought by a judgment creditor under s. 33B(4) of the IA 1967 to prohibit the DGI from issuing a certificate of discharge, the court's power or jurisdiction is not strictly limited to the two courses of action prescribed in s. 33B(6)(a) and 33B(6)(b) of the same Act. Instead, the court retains a broader discretion, grounded in the principles of justice, equity, and fairness, to make such orders as may be appropriate and necessary in the particular circumstances of each case.

[105] For the purpose of this court's analysis and reasoning, the relevant statutory provision, s. 33B(4) of the IA 1967, is reproduced below:

> (4) A creditor who has furnished a notice of his objection and the grounds of his objection in accordance with subsection (2) may, within twenty-one days of being informed by the Director General of Insolvency that his objection has been rejected, **make an application to the court for an order prohibiting the Director General of Insolvency from issuing a certificate of discharge.** (emphasis added)

[106] Firstly, s. 33B(4) of the IA 1967 confers right on the creditor to apply to the court for an order prohibiting (without any restricted period) the DGI from issuing a certificate of discharge without specifying any time limit in the prohibition. This implicitly conferred the power to the court to make such order as applied for by the creditor as may be just.

[107] Secondly, s. 33B(6) of the IA 1967 provides that:

> (6) On an application made under subsection (4), the court **may, if it thinks it just and expedient -**
>
> (a) dismiss the application;
>
> (b) make an order that for a period not exceeding two years a certificate of discharge shall not be issued by the Director General of Insolvency. (emphasis added)

[108] The use of "may" following by the phrase "if it thinks just and expedient" in s. 33B(6) of the IA 1967, shows that the Legislature intended the court's powers that may be exercised to be permissive, discretionary and non-exhaustive and not mandatory restrictive.

See: *Yap Teck Ngian v. Yap Hong Lang & Ors* [2006] 4 CLJ 492; [2006] 6 MLJ 607 at para. 21, p. 618 – Per Zulkefli JCA; *Re Yong Tet On, Paul, Ex Parte Chung Khiaw Bank Ltd* [1996] 1 CLJ 836; [1996] 1 MLJ 721 at p. 726 and *Sing Hoe Motor Co Ltd v. PP* [1968] CLJU 142; [1968] 1 LNS 142; [1968] 2 MLJ 54 at 55.

[109] Had the Legislature intended to restrict court's power strictly confined to s. 33B(6)(a)-(b) of the IA 1967 in such application of a creditor under s. 33B(4) of the same Act, it would have used the word "shall" alone in s. 33B(6)(a)-(b) of the Act or used exclusive language such as "only".

[110] To interpret s. 33B(6) of the IA 1967 narrowly would be to read into s. 33B(4) of the same Act, a limitation that does not exist.

[111] Thus, s. 33B(6) of the IA 1967 ought to be construed harmoniously with s. 33B(4) of the same Act. The rigid application of two choices under s. 33B(6)(a)-(b) of the IA 1967 would be inconsistent with the broader right conferred upon a creditor to apply to "prohibit" issuance of the certificate of discharge by the DGI under s. 33B(4) of the same Act.

[112] In *Re Atwill (A Bankrupt)* [1958] NZLR 873, the Supreme Court of New Zealand has to deal with the provision of s. 127 of the New Zealand's Bankruptcy Act 1908 which so far as relevant (similarly worded and structured as s. 33B(6) of our IA 1967) provides:

> 127. On the hearing of an application for an order of discharge **the Court may, in its own absolute discretion,** either:
>
> (a) Grant or **refuse an immediate order of discharge;** or
>
> (b) Suspend the same from taking effect for such time as the Court thinks fit; or
>
> (c) Grant an order of discharge to take effect upon the performance of any condition or conditions touching any salary, pay, emoluments, profits, wages, earnings, or income that may after the date of the order become due to the bankrupt, and touching property of the bankrupt acquired after the date of the order, or touching the payment of any of the preferential claims referred to in the next section hereof; or
>
> (d) Grant an order, subject to the bankrupt consenting to judgment being entered against him by the Assignee for the whole or any portion of the balance of the debts provable under the bankruptcy that is not satisfied at the date of his discharge; but in such case

execution shall not be issued on the judgment without leave of the Court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available for the payment of his debts. (emphasis added)

[113] In interpreting the provision, the Supreme Court of New Zealand (at p. 874) held that the power of "refusal" under s. 127(a) of the New Zealand's Bankruptcy Act 1908 is not confined to the refusal of an immediate order of discharge. Although the section expressly refers to "an immediate order of discharge", the court adopted a broader interpretation, finding that it also empowers the court to refuse a discharge application simpliciter, that is, without making any further order. Accordingly, the power of refusal under s. 127(a) is not limited solely to immediate discharge orders.

[114] Thus, by analogy, the court's power in considering a creditor's application under s. 33B(4) of the IA 1967 to prohibit the DGI from issuing a certificate of discharge, if it sees fit to do so, should not be narrowly confined to the two-year prohibition period prescribed under s. 33B(6)(b) alone.

[115] Rather, the court retains a broader discretion to issue such further orders or directions as may be appropriate, where the circumstances so warrant when it is just and expedient.

[116] Section 87 of the IA 1967 empowers the court to oversee and scrutinise the conduct of the DGI. If the DGI fails to faithfully perform his statutory duties or comply with legal requirements, or if a creditor lodges a complaint, the court is obliged to inquire into the matter and may take any action it deems expedient. This provides the court's supervisory authority over the DGI to ensure accountability and proper execution of duties.

[117] Further, s. 91 of the IA 1967 provides:

91 General power of bankruptcy courts

(1) Subject to this Act, the court, under its jurisdiction in bankruptcy, shall have **full power to decide all questions** of priorities and **all other questions whatsoever,** whether of law or fact, which may arise in any case of bankruptcy coming within the cognizance of the court, or which the court deems it **expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.**

(2) Where default is made by a debtor or other person in obeying any order or direction given by the court, or given by the Director General of Insolvency, or any other officer of the court, under any power conferred by this Act, the court may, on the application of the Director General of Insolvency or other duly authorized person, or of its own motion, order such defaulting debtor or person to comply

A with the order or direction so given, and may also, if it thinks fit, make an immediate order for the committal of such defaulting debtor or other person.

(3) The power given by subsection (2) shall be deemed to be in addition to and not in substitution for any other right or remedy in respect of such default. (emphasis added)

B

[118] Section 91 of the IA 1967 grants the bankruptcy court "full power to decide all questions … and do complete justice". This is a deliberate preservation of equitable jurisdiction, and allows the court to tailor remedies as required. To deny the court such flexibility in the context of s. 33B(6)(a)-
C (b) of the IA 1967 would undermine the overarching intention of the legislation, that is a just, efficient, and fair administration of bankrupt estates.

[119] In the premises, the court is of the view that s. 33B(6)(a)-(b) of the IA 1967 should not be construed as taking away the general and wide power of the court in its bankruptcy jurisdiction under ss. 87 and 91 of the same Act
D in the absence of clear and unambiguous language.

See: *Commissioners Of Customs And Excise v. Cure & Deeley Ltd* [1961] 1 QB 340 at 651, per Sachs J at p. 357; and *Mak Sik Kwong v. Minister Of Home Affairs, Malaysia* [1975] CLJU 96; [1975] 1 LNS 96; [1975] 2 MLJ 168.

E **[120]** In the view of this court, s. 33B(4) of the IA 1967 that confers the right on creditors to apply to court to prohibit the DGI from issuing a certificate of discharge, aims not only to protect creditors from unfair discharges, but also ensure honest bankrupts get a fresh start.

[121] If the court is restricted, in such application, to making only the order
F under s. 33B(6)(a) or 33B(6)(b) of the IA 1967 and nothing else, a bankrupt who fraudulently concealed assets (perhaps by making or managed to make himself untraceable to avoid complying with his duties and obligations as bankrupt under the Act by whatever means) could still get discharge after two years and creditors with legitimate objections would be left without recourse.

G

[122] Thus, it cannot be the intention of the Legislature by enacting the provision of s. 33B(6)(a)-(b) of the IA 1967 that court has no power to make other order to prevent injustice in the circumstances.

[123] Furthermore, a narrow construction that restricts the court's power to
H prohibiting DGI from issuing a certificate of discharge solely for a period not exceeding two years would lead to untenable consequences.

[124] It would imply that any improper, unjustifiable, or even abusive exercise of discretion by DGI would be rendered valid or immune from further scrutiny merely upon the lapse of the two-year period. Such an
I interpretation cannot reasonably be presumed to reflect the true intention of the Legislature.

Conclusion And Order

[125] For the reasons as given, and as the DGI has failed to produce evidential materials to justify the proper exercise of discretion in deciding to issue the certificate of discharge under s. 33A of the IA 1967 which the DGI bears the burden to demonstrate, this court therefore allows the JC's appeal in this case.

[126] In the circumstances, and for the reasons stated before, the court makes the following orders:

(i) the DGI is prohibited, pursuant to s. 33B(6)(b) of the IA 1967, from issuing a certificate of discharge in respect of the JD for a period of two years from the date of this order;

(ii) during this two-year period, the DGI is directed to take reasonable steps to administer the JD's estate, including undertaking reasonable efforts to trace and locate the JD and to ascertain whether any property or income is available for realisation or contribution to the estate;

(iii) upon the expiry of the two-year period, should the DGI intend to issue a certificate of discharge, the process under s. 33B of the IA 1967 shall recommence, including the issuance of a fresh notice and full compliance with all procedural requirements thereunder;

(iv) this is without prejudice to the right of any creditor to file a fresh objection and apply to the court under s. 33B of the IA 1967 to prohibit the issuance of a certificate of discharge; and

(v) there shall be no order as to costs.